

SENATE BILL No. 375

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4-9.

Synopsis: Car rental agreements. Specifies, for purposes of the law regulating contract provisions under which a motor vehicle rental company agrees to waive claims against the renter for damage to the rented auto, that "damage" includes damage not caused by collisions. Allows a rental agreement to provide for the recovery by the rental company of reasonable attorney's fees.

Effective: July 1, 2003.

Clark

January 16, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 375

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-4-9-2 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2003]: Sec. 2. As used in this chapter, "~~collision~~
3 "damage waiver" or "waiver" means any contract or contract provision,
4 whether separate from or a part of a rental agreement, under which a
5 rental company agrees to waive any or all claims against the renter for
6 any damage to the rented vehicle during the term of the rental
7 agreement.
8 SECTION 2. IC 24-4-9-9 IS AMENDED TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2003]: Sec. 9. A rental company may provide
10 in a rental agreement that a ~~collision~~ damage waiver does not apply
11 under any of the following circumstances:
12 (1) The damage is caused by the authorized driver:
13 (A) intentionally; or
14 (B) through willful or wanton misconduct.
15 (2) The damage arises out of the authorized driver's operation of
16 the vehicle while intoxicated or under the influence of an illegal
17 drug.



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(3) The damage is caused while the authorized driver is engaged in a speed contest, race, road rally, test, or driver training activity.

(4) The renter provided the rental company with fraudulent or false information and the rental company would not have rented the vehicle if the rental company had received true information.

(5) The damage arises out of vandalism or theft of the rented vehicle caused by the negligence of the authorized driver, except that the possession by the authorized driver, at the time of the vandalism or theft, of the ignition key furnished by the rental company shall be prima facie evidence that the authorized driver was not negligent.

(6) The damage arises out of the use of the vehicle in connection with conduct that could be properly charged as a felony.

(7) The damage arises out of the use of the vehicle to carry persons or property for hire or to tow or push anything.

(8) The damage arises out of the use of the vehicle outside the United States, unless the use is specifically authorized by the rental agreement.

SECTION 3. IC 24-4-9-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) A rental company may offer and sell, for a separate charge, a ~~collision~~ damage waiver that is set forth in the rental agreement and that relieves an authorized driver of any liability for damage that the authorized driver might otherwise incur.

(b) Each rental agreement that contains a ~~collision~~ damage waiver must disclose the following information in plain language printed in type at least as large as 10 point type:

(1) That the waiver is optional.

(2) That the waiver entails an additional charge.

(3) The actual charge per day for the waiver.

(4) All restrictions, conditions, and provisions in or endorsed on the waiver.

(5) That the renter or other authorized driver may already be sufficiently covered for damage to the rental vehicle and should examine the renter's or authorized driver's automobile insurance policy to determine whether the policy provides coverage for ~~collision~~ damage, loss, or loss of use to a rented vehicle, and the amount of the deductible.

(6) That by entering into the rental agreement, the renter may be liable for damage, loss, or loss of use to the rental vehicle. ~~resulting from a collision.~~

(c) A rental company may not rent a vehicle to a renter until the

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1 renter has acknowledged in writing that the renter understands the
 2 information set forth in subsection (b). The acknowledgment must be
 3 written in plain language on the rental agreement and must be initialed
 4 by the renter.

5 SECTION 4. IC 24-4-9-13 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. A rental company
 7 and renter may agree that the renter will be responsible for no more
 8 than all of the following:

9 (1) Physical or mechanical damage to the rented vehicle up to its
 10 fair market value, as determined in the customary market for the
 11 sale of that vehicle ~~resulting from collision~~ regardless of the cause
 12 of damage.

13 (2) Loss due to theft of the rental vehicle up to its fair market
 14 value, as determined in the customary market for the sale of that
 15 vehicle. However, the renter shall be presumed to have no
 16 liability for any loss due to theft if the renter or authorized driver:

17 (A) has possession of the ignition key furnished by the rental
 18 company or establishes that the ignition key furnished by the
 19 rental company was not in the vehicle at the time of the theft;
 20 and

21 (B) files an official report of the theft with the police or other
 22 law enforcement agency within twenty-four (24) hours of
 23 learning of the theft and reasonably cooperates with the rental
 24 company, police, and other law enforcement agency in
 25 providing information concerning the theft.

26 The presumption set forth in this subdivision is a presumption
 27 affecting the burden of proof, which the rental company may
 28 rebut by establishing that a renter or other authorized driver
 29 committed or aided and abetted in the commission of the theft.

30 (3) Physical damage to the rented vehicle up to its fair market
 31 value, as determined in the customary market for the sale of that
 32 vehicle, resulting from vandalism occurring after, or in
 33 connection with, the theft of the rented vehicle. However, the
 34 renter is presumed to have no liability for any loss due to
 35 vandalism if the renter or authorized driver:

36 (A) has possession of the ignition key furnished by the rental
 37 company or establishes that the ignition key furnished by the
 38 rental company was not in the vehicle at the time of the
 39 vandalism; and

40 (B) files an official report of the vandalism with the police or
 41 other law enforcement agency within twenty-four (24) hours
 42 of learning of the vandalism and reasonably cooperates with

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the rental company, police, and other law enforcement agency in providing information concerning the vandalism.

The presumption set forth in this subdivision is a presumption affecting the burden of proof, which the rental company may rebut by establishing that a renter or other authorized driver committed or aided and abetted in the commission of the vandalism.

(4) Physical damage to the rented vehicle and loss of use of the rented vehicle up to its fair market value, determined in the customary market for the sale of that vehicle, resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Loss of use of the rented vehicle, if the renter is liable for damage.

(6) Actual charges for towing, storage, and impoundment fees paid by the rental company, if the renter is liable for damage.

(7) **Reasonable attorney's fees.**

(8) An administrative charge, including the cost of appraisal and all other costs and expenses incident to the damage, loss, loss of use, repair, or replacement of the rented vehicle.

SECTION 5. IC 24-4-9-18, AS AMENDED BY P.L.57-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. Notwithstanding section 17(3) of this chapter, a rental company may charge for the rental of a vehicle, in addition to the rental rate, taxes, airport fees, and any mileage charge, an additional charge for an item or service provided during the rental of the vehicle if the renter can avoid incurring that additional charge by choosing not to obtain the item or utilize the service. Items and services for which the rental company may impose an additional charge under this section include the following:

(1) Optional insurance or accessories requested by the renter.

(2) Service charges assessed when the insured returns the vehicle to a location other than the location where the vehicle was rented.

(3) A charge for refueling a vehicle that is returned with less fuel in its tank than when the rental period began.

(4) A ~~collision~~ damage waiver that conforms to the provisions of this chapter.

SECTION 6. IC 24-4-9-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 22. A rental company may not engage in any unfair, deceptive, or coercive act to induce a renter to purchase a ~~collision~~ damage waiver or any other optional good or service.

SECTION 7. IC 24-4-9-23 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 23. (a) If a rental
 2 company enters into at least one (1) rental agreement containing a
 3 ~~collision~~ damage waiver in Indiana during a calendar year, the rental
 4 company shall compile and maintain the following statistics concerning
 5 all the rental agreements the rental company enters into in Indiana
 6 during that calendar year:

7 (1) The total expenses incurred by the rental company as a result
 8 of damage to vehicles that is caused while the vehicles are subject
 9 to the rental agreements.

10 (2) The total amount of the expenses referred to in subdivision (1)
 11 for which the rental company is indemnified.

12 (3) The total number of vehicles subject to the rental agreements,
 13 multiplied by the total number of days of the calendar year during
 14 which the vehicles are subject to the rental agreements.

15 (b) The expenses on which a rental company must compile statistics
 16 under subsection (a)(1) are the following:

17 (1) The cost that the rental company pays to replace damaged
 18 vehicle parts, less all discounts and price reductions or
 19 adjustments received by the rental company.

20 (2) The cost of labor paid by the rental company to replace
 21 damaged vehicle parts.

22 (3) The cost of labor paid by the rental company to repair
 23 damaged vehicle parts.

24 (4) The loss of use of the damaged vehicles, which must be
 25 determined according to the following formula:

26 STEP ONE: For each damaged vehicle, multiply the time
 27 necessary for the repair and replacement of damaged parts by
 28 eighty percent (80%).

29 STEP TWO: For each damaged vehicle, multiply the product of
 30 STEP ONE by the rental rate set forth in the rental agreement to
 31 which the vehicle was subject when damaged.

32 STEP THREE: Total the figures determined under STEP TWO
 33 for all of the damaged vehicles.

34 (5) Actual charges for towing, storage, and impound fees paid by
 35 the rental company.

36 (c) The director of the division of consumer protection appointed
 37 under IC 4-6-9-2 may request that rental companies provide the
 38 director with statistics compiled and maintained under subsection (a).

39 (d) Upon receiving a request under subsection (c), a rental company
 40 shall provide the director of the division of consumer protection with
 41 the statistics that are requested by the director.

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